



# FREDERICK COUNTY PLANNING COMMISSION

## May 22, 2013 – Public Hearing

**TITLE:** Urbana-Natelli DRRA

**FILE NUMBER:** DRRA 12-03

**REQUEST:** DRRA Finding of Consistency  
Review of the *Development Rights and Responsibilities Agreement (DRRA)* for the Urbana -Natelli Projects to determine whether the proposed agreement is consistent with the Comprehensive Plan.

**PROJECT INFORMATION:**

**LOCATION:** Vicinity of MD 355/Worthington Blvd, MD 80 and I-270  
in Urbana  
**ZONE:** PUD, VC, ORI, MXD  
**REGION:** Urbana  
**WATER/SEWER:** varies  
**COMP. PLAN/LAND USE:** varies

**APPLICANT/REPRESENTATIVES:**

**APPLICANT:** Tom Natelli/Natelli Communities, (et. al.)  
**OWNER:** Tom Natelli/Natelli Communities, (et. al.)  
**ENGINEER:** Rodgers and Associates  
**ATTORNEY:** Krista McGowan, Esq.,

**STAFF:** Kathy Mitchell, Assistant County Attorney  
Eric Soter, Director Community Development

**RECOMMENDATION:** Staff recommends that the Frederick County Planning Commission find that the location, character, and extent of the proposed Development Rights and Responsibilities Agreement for the Urbana-Natelli Projects are consistent with the Frederick County Comprehensive Plan.

**ATTACHMENTS:**

1. Draft Development Rights and Responsibilities Agreement
2. Draft APFO Letter of Understanding

# STAFF REPORT

## ISSUE

The Planning Commission role in the review of the *Development Rights and Responsibilities Agreement (DRRA)* for the Urbana-Natelli projects development is to determine whether the proposed agreement is consistent with the Comprehensive Plan.

The petition from Natelli Communities was submitted to the County on September 21, 2012. On October 25, 2012, the BOCC voted to accept the petition and move forward with staff review. Since that time, staff and the Developer have worked together to create the attached draft DRRA and draft APFO Letter of Understanding (“LOU”).

This DRRA is not being reviewed concurrent with any other reviews other than a new APFO test for certain projects, and an amended and restated LOU incorporating all new and existing APFO approvals into a Combined Amended and Restated LOU for Natelli’s holdings in the Urbana area. Those holdings include: the remainder of the Villages of Urbana PUD; the Northern MXD; the Urbana Office Research Center (ORC); Worthington Square (former Geisbert Property); and certain Villages of Urbana Village Center (VC) parcels. In this manner, this DRRA is somewhat different than the previous agreements that have come before the Board. A brief description of the project status/history is provided in the next section.

## BACKGROUND

### ***Summary of Development History***

This DRRA is unique in that it encompasses several different development projects in the Urbana community growth area. The projects and the development status of each project are described below:

- Villages of Urbana PUD – Includes remaining unbuilt portion of the original 977.7 acre PUD rezoned in the 1970’s, with the initial Phase 2 Plan approved in 1993 and revised at various times over the last 20 years, with the latest Phase 2 revisions approved in 2011, and certain preliminary/final site plans amended/approved just within the last couple of months.
- Urbana Office Research Center MXD – Initial Phase 2 Plan was approved in March 1995. Phase I MXD Plan amended and effective December 6, 2012 to reflect change in commercial/employment mix. Partially built out with the Fannie Mae Data Center and an insurance company office. The Social Security data center is under construction.
- Urbana Town Center MXD – Phase I MXD Plan amended and effective December 6, 2012. Preliminary and Final Site Plans are expected to be submitted in the coming months.
- Worthington Square (Geisbert Property) – MX Concept Plan approved January 9, 2013 for 72 townhouse units and a commercial parcel. Review begun for the preliminary/final site plan.
- Village Center Parcels – Includes two parcels totaling 12 single-family lots that comprise 6 single-family detached on the ‘western parcel’ with preliminary/final site plan approval, and 2 single-family detached & 4 townhomes on the ‘eastern M1F parcel’ with concept plan approval.

The Development Rights and Responsibilities Agreement (DRRA) review and approval procedures are found in Chapter 1-25 of the County Code. If a DRRA is requested concurrent with any other development approval such as a rezoning or adequate public facilities approval, the applicable provisions in Chapters 1-19 and/or 1-20 of the County Code would apply respectively. The APFO, while running concurrent with the DRRA approval, are separate actions. The following analysis includes the key provisions and provides the background on the following: *Summary of Proposed DRRA, Development Rights, Development Responsibilities, Summary of Proposed Changes & Key Development Issues, and an assessment of a Finding of Consistency.*

### **Summary of Proposed DRRA**

The two primary components of any DRRA are the *development rights* and the *development responsibilities* that will be fixed for the project for a specified time period. The Urbana/Natelli DRRA also propose to include a Combined Adequate Public Facilities Ordinance (APFO) approvals that incorporate the development approvals as described above, as part of the DRRA approval process.

The Applicant is proposing that the DRRA be in effect for a period of 20 years. Described below is a summary of the rights and the responsibilities applicable to this development. The attached draft DRRA and accompanying exhibits include the specific detailed development approvals and conditions of approval, including the timing of construction, payments, and/or dedication of certain public infrastructure with respect to the development timing.

### **Development Rights**

- Maintain the zoning of the respective developments including: Villages of Urbana = PUD, Urbana Office Research Center = MXD/ORI; Northern MXD = MXD; Worthington Square = VC/MX; Village Center Parcels = VC.
- Maintain or obtain other approvals based on current regulations or, if applicable, the regulations in effect when the approvals were granted.
- Receive revised APFO approval (including an Amended and Restated LOU) for the subject properties concurrent with the DRRA approval process.
- Proceed with project build out for the various phases as outlined in the DRRA.
- Freeze current County development regulations for the duration of the DRRA.
- Maintain the terms of DRRA for a period of 20 years.

### **Development Responsibilities**

This is a summary of the major conditions of approval. The attachments provide detailed information on the timing of approvals for the development.

- Construct or pay for/guarantee road improvements as detailed in the Amended and Restated LOU. These include but are not limited to: improvements to the interchange ramps at I-270 and MD 80; extending the 4-lane divided section of MD 355/Worthington Boulevard to serve the Northern MXD; widen MD 80 at various locations to accommodate 2 eastbound and westbound lanes; improvements to MD 80 @ Sugarloaf Parkway roundabout; MD 355 @ Park Mills Road; new northbound to eastbound ramp from I-270 to MD 80; signal warrant analysis and improvements; implementation of Transportation Demand Management Program (TDM); and payment toward certain existing escrows among other improvements.
- Construct or pay for/guarantee water and sewer improvements as detailed in the Amended and Restated LOU.
- Pay the APFO school construction fees as detailed in the Amended and Restated LOU. Based on current rate and unit mix, would provide for over \$7.5 million in mitigation fees, of which just over \$1 million has been received to date for recent subdivision activity. (Note this is separate from any impact fees for schools which would generate approximately \$10 million based on the current rate and unit mix).
- Remit the payment in lieu fees under the Moderately Priced Dwelling Unit regulations.
- Pay all normal and customary development review fees and impact fees.
- Dedicate a +/-13 acre elementary school site (to be located in the Urbana Northern MXD)
- Maintain the terms of the DRRA for a period of 20 years.

### **Summary of Key Development Highlights**

The primary component of this DRRRA is to document the current and pending approvals of the subject properties including the concurrent APFO application to test for the remainder of the development that does not yet have APFO approval or has APFO approvals but is not yet recorded and vested.

### **Remaining Development - Units/Employment\***

- Villages of Urbana (*Remaining Unbuilt*) - 399 DU (*155 under construction in section M1D, 111 approved in section M1F, 92 age-restricted approved in Boxwood, 41 in remaining undeveloped land bays (i.e. M1C)*)
  - Northern MXD - 610 DU/1.95M sq. ft. employment, 50K sq. ft. commercial
  - Worthington Square - 72 DU/5,000 sq. ft. commercial
  - Village Center Parcels - 12 DU
  - ORC - @690K sq. ft. employment, @ 9,300 sq. ft. restaurant/retail
- \* May not include entire amount of employment/commercial with existing approvals (i.e. Urbana commercial pad sites, other existing approvals in the ORC)*

Major public facilities improvements will be provided for as outlined in the Amended and Restated LOU and as summarized above to include roads, water, sewer, and school improvements as well as land conveyed for public uses (i.e. schools,).

### **Remaining Issues**

As of this date there are not any major remaining issues, although refinements to the associated documents may still occur during the process leading up to the BOCC public hearing and final decision.

## ANALYSIS

### **Finding of Consistency:**

As for the Planning Commission's role, it is limited as prescribed in the Land Use Article of the Annotated Code of Maryland and in Chapter 1-25 of the County Code. In addition, recent amendments to the Land Use Article (as provided for in 2009 SB-280) provide further guidance in making recommendations with respect to "findings of consistency". The bill indicates that:

*"....REQUESTS THAT AN ACTION BE "CONSISTENT WITH" OR HAVE "CONSISTENCY WITH" A COMPREHENSIVE PLAN, THE TERM SHALL BE DEFINED TO MEAN AN ACTION TAKEN THAT WILL FURTHER, AND NOT BE CONTRARY TO, THE FOLLOWING ITEMS IN THE PLAN: (1) POLICIES; (2) TIMING OF THE IMPLEMENTATION OF THE PLAN; (3) TIMING OF DEVELOPMENT; (4) TIMING OF REZONING; (5) DEVELOPMENT PATTERNS; (6) LAND USES; AND (7) DENSITIES OR INTENSITIES."*

Lastly, in an effort to provide even more clarity on how to define consistency, the following excerpt is from the Maryland Department of Planning Models and Guidelines Document titled: 'Achieving Consistency under the Planning Act'. It states:

*The fundamental concept of "consistency" under the new Planning Act is that land use regulations and decisions should agree with, and implement what the Plan recommend and advocates. A consistent regulation or decision may show clear support for the Plan. It may also be neutral – but it should never undermine the Plan.*

To that end, the proposed DRRA for the Urbana-Natelli project DRRA is proposed on land that is zoned for mixed use, residential and commercial development and the proposed densities and intensities are within the limits as prescribed in the Frederick County Comprehensive Plan. Further, the timing of development and infrastructure improvements outlined within the DRRA provide a mechanism to stage development consistent with the policies of the Comprehensive Plan. In fact a certain amount of the public infrastructure is already constructed as a significant portion of the development has been built. The DRRA, in combination with the APFO LOU, provides for the timing of certain improvements or financial contributions for additional public infrastructure, services, and/or programs that support the Comprehensive Plan. In addition, the existing and proposed development design along with the proposed land use plan will further community design policies of the Comprehensive Plan.

## RECOMMENDATION

To that end, Staff recommends that the Frederick County Planning Commission find:

1. That the location, character, and extent of the proposed Development Rights and Responsibilities Agreement for the Urbana-Natelli Projects are consistent with the Frederick County Comprehensive Plan.

## **PLANNING COMMISSION ACTION**

### **MOTION TO APPROVE**

I move to find that the that the location, character, and extent of the proposed Development Rights and Responsibilities Agreement (DRRA 12-03) for the Urbana-Natelli projects **are consistent** with the Frederick County Comprehensive Plan.

### **MOTION TO DENY**

I move to find that the that the location, character, and extent of the proposed Development Rights and Responsibilities Agreement (DRRA 12-03) for the Urbana-Natelli projects **are not consistent** with the Frederick County Comprehensive Plan.